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10/077,718	02/15/2002	Daniel Bone	0275S-0327DV	5231
27572	7590	04/21/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			DEXTER, CLARK F	
			ART UNIT	PAPER NUMBER
			3724	

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/077,718  
Filing Date: February 15, 2002  
Appellant(s): BONE ET AL.

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Mr. Michael Schmidt  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 23, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

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**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct. It is noted that, for the sake of efficiency, the second prior art rejection (i.e., the claims being anticipated by Kling or obvious over Kling in view Nicholson) has been withdrawn by the Examiner.

**(7) Grouping of Claims**

Claims 22 and 23 stand or fall together as stated by appellant.

**(8) ClaimsAppealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

2,175,488

Stoll

10-1939

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Rejection Over Stoll

Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stoll, pn 2,175,488.

Stoll discloses a mechanism (e.g., in Figs. 1-3) with every structural limitation of the claimed invention as follows:

a housing (e.g., 10);

a rod (e.g. 22) attached to said housing;

a clamping arm (e.g., 13) rotatably mounted on the rod, said clamping arm being rotatable through 360 degrees about an axis of rotation, said clamping arm and said housing each defining a supporting surface (e.g., as viewed in Figure 1, the concave upper surface of the arm 13 shown in solid lines, and the leftmost and upper concave surface of the housing 10 as viewed in Figure 1) for engaging said object (e.g., in a position just prior to that shown in phantom in Figure 1 wherein an object could be positioned between the concave surfaces described above);

a non-releasable one way rotary clutch (e.g., 19) positioned between and operatively engaging said rod and said clamping arm to permit the clamping arm to freely rotate in only one direction about the axis of rotation; and

the clamping arm having a centre mass spaced apart from the axis of rotation.

In the alternative, if it is argued that Stoll does not disclose a housing, the Examiner takes Official notice that housings on such mechanisms are old and well known in the art for various known reasons including enclosing the lowermost portion of the disclosed invention for various known benefits including an improved/alternate

appearance. Therefore, it would have been obvious to one having ordinary skill in the art to provide a housing on the mechanism disclosed by Stoll for the well known benefits including those described above.

Rejections Over Kling

These rejections have been withdrawn by the Examiner.

**(11) Response to Argument**

As described in detail in the above prior art rejection, the prior art, specifically Stoll, discloses or in the alternative suggests every structural limitation of the claimed invention.

In the first full paragraph on page 5 of the Appeal Brief, appellant argues that

“The Examiner has conveniently skipped a couple of structural limitations, specifically ‘said clamping arm and said housing each defining a support surface for engaging said object.’”

Appellant continues by arguing that

“The reason that these structural limitations were omitted by the Examiner is because Stoll does not define a supporting surface on each of these elements since Stoll is directed toward a foot rest and thus has nothing to do with a clamping mechanism. Stoll is simply a different application for a one-way clutch.”

The Examiner agrees that the invention of Stoll is directed to a foot rest and is not disclosed as being or including a clamping mechanism. However, the Examiner respectfully submits that the Examiner's position is not that the prior art device is disclosed as being used in the same manner as the present invention. Rather, the Examiner's position is that the prior art discloses (or in the alternative suggests) all of the claimed structure and is fully capable of performing the function recited in the claims. That is, as described in the prior art rejection above, Stoll has opposing concave surfaces (the leftmost and upper side of component 10 as viewed in Figure 1, and the concave surface of component 13) between which an object can be engaged as well as clamped.

In the second full paragraph on page 5 of the Appeal Brief, appellant argues that

"While the intended use of a device may not be able to serve to patentably distinguish a claimed invention over the prior art, where there are specific structural limitations that allow a device to perform an intended use, the recitation of these specific structural limitations can serve to patentably distinguish a claimed invention. Even if the prior art performs all the functions recited in the claim, the prior art cannot anticipate the claim if there is any structural differences."

Appellant continues by concluding that

"It is clear that Stoll does not disclose the supporting surfaces defined by Claim 22 of the present invention."

Contrary to appellant's arguments described above, as well as appellant's arguments in the middle paragraph on page 6 of the appeal brief, the Examiner respectfully submits that Stoll does disclose the supporting surfaces defined by the claims including claim 22 of the present invention. These surfaces are specified in the prior art rejection above as well as in the previous paragraph at the top of page 5.

In the last paragraph on page 6 of the Appeal Brief, appellant argues that "The concept of defining two supporting surfaces in Stoll for engaging the object would actually render Stoll unsatisfactory for its intended purpose."

The Examiner respectfully disagrees. The device of Stoll could clearly operate as a foot rest, and then temporarily be used to clamp an object for cutting the object or the like. Further, even if an object was clamped between the two concave surfaces described above, the foot rest would still be capable of use as a foot rest. Thus, its function would remain intact. Further, once the object was clamped and cut (e.g., in the same manner as for the present invention), the foot rest could be repositioned as desired. Therefore, the Examiner respectfully submits that in using the foot rest for clamping an object, the function of the foot rest would not be destroyed, but rather the foot rest would remain fully operable as a foot rest while being capable of performing a clamping function. In any event, the Examiner's position again is that Stoll discloses (or in the alternative suggests) all of the structure of the claimed invention and is fully capable of performing the functions recited in the claims.

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It is noted that appellant has not challenged the taking of Official notice in the alternative "102/103" prior art rejection. Therefore, appellant is considered to have conceded this issue.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Clark F. Dexter  
Primary Examiner  
Art Unit 3724

cfd  
April 18, 2005

Conferees:

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